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18 Attorneys for Defendants and Cross-Complainant ARMANDO VARGAS,
19 NOE VARGAS & JAVIER VARGAS

20 UNITED STATES DISTRICT COURT
21 FOR NORTHERN DISTRICT OF CALIFORNIA
22 SAN JOSE DIVISION
23

24 JOSE FELIPE RUIZ; CARLOS AGUILAR
25 RIVAS; MARCELINO HERNANDEZ;
ALEJANDRO AGUILAR; RAMIRO
HERNANDEZ PARRA; SALOMON GOMEZ;
MAURO HERNANDEZ; HERIBERTO
PAMAZ-LUCAS; ANTONIO HERNANDEZ;
ANTONIO GONZALES; and ALEJANDRO
GONZALES,

Plaintiffs,

vs.

Case No.: 08-CV-01804PVT

**STIPULATION TO CONTINUE TRIAL
AND PRE TRIAL DEADLINES 90 DAYS
AND [XXXXXXXXXX] ORDER**

ARMANDO VARGAS; JAVIER VARGAS;
NOE VARGAS; EDITH R. SAUNO;

Defendants

ARMANDO VARGAS

Cross-Complainant

Vs

EDITH R. SAUNO

Cross-Defendant

The parties submit the following Stipulation, to continue the Trial and all trial setting deadlines 90 days, including discovery cut-off deadlines. This is based on events or information learned in March and April which both impacts trial setting and give the parties a realistic window to resolve the matter. As will be shown herein, events have occurred which were preconditions to beginning negotiations. A continuance would give the parties a period to attempt to resolve this dispute by scheduling a Settlement Conference with the Honorable Howard Lloyd and if a settlement cannot be reached finish up fact discovery.

Good cause is met for the continuance based on the following which affects every Defendant and some of the Plaintiffs:

1. With respect to Defendant Armando Vargas, his Chapter 7 Bankruptcy, Case No. 09-56214 RLE, is ongoing and there is a stay as to him. Plaintiffs have filed an adversarial action and had their first Case Management Conference on March 25, 2010 in the bankruptcy

1 action. Plaintiffs' counsel has retained bankruptcy co-counsel Gregory McDonald. Both have
 2 communicated extensively with Barry Milgrom counsel for the Chapter 7 Bankruptcy Trustee.
 3 During those conversations, Mr. Milgrom made it clear that some of the adversarial claims
 4 asserted are the property of the bankruptcy Estate and may not be negotiated or compromised.
 5 As this is Plaintiffs' counsel's understanding as well, these claims are being dismissed. This will
 6 allow the parties to begin negotiating with Defendant Vargas' bankruptcy counsel and if a
 7 settlement is reached it will be presented to the Trustee and to the Bankruptcy Court. This has
 8 caused a delay which was cleared up prior to the March 25, 2010 CMC. Once these claims are
 9 dismissed, both the Chapter 7 Trustee's attorney and Defendant Vargas' bankruptcy counsel
 10 have expressed a willingness to enter into settlement negotiations.

11 2. Plaintiffs learned for the first time on April 19, 2009 that Defendant JAVIER
 12 VARGAS filed for bankruptcy protection under Chapter 7 and was granted a discharge on June 9,
 13 2009 in the case entitled In re Javier Vargas Pena 09-51532 ASW 7. Based on the preliminary
 14 research conducted by Plaintiffs' counsel, Plaintiffs were not listed as creditors. Moreover, it
 15 appears that the Bankruptcy Court has jurisdiction over the scope of the discharge. Counsel for
 16 Javier Vargas contends that whether or not Plaintiffs were listed as creditors is inconsequential.
 17 Since Javier Vargas filed chapter 7 bankruptcy and did not have any assets, Plaintiffs (the
 18 potential creditors) cannot execute on any potential judgment against Javier Vargas since those
 19 claims would be discharged under the bankruptcy code and applicable case law. Javier Vargas
 20 relies on the following cases as support for his position: *In re Beezley* (1992) 994 F.2d 1433,
 21 1436-1437 ["...in the typical Chapter 7 case, the debtor's failure to list a creditor does not, in and
 22 of itself, make the creditor's claim nondischargeable... the debt remains within the scope of the
 23 discharge afforded by section 727. Scheduling, per se, is irrelevant."]; *Mendiola*, 99 B.R. at 867
 24 [since dischargeability is unaffected by scheduling in a no asset, no bar date case, "reopening the
 25 case merely to schedule the debt is for all practical purposes a useless gesture."]; *American*
Standard, 147 B.R. at 483 [of "no legal effect"]; *Stecklow*, 144 B.R. at 317 ["futile"]; *Tucker*,
 143 B.R. at 334 ["unnecessary" and "unwarranted"]; *Peacock*, 139 B.R. at 422 ["pointless"];
Thibodeau, 136 B.R. at 10 ["meaningless"]. A continuance will allow the parties to asses the

1 impact of this during settlement negotiations. Moreover, it would give Defendant Javier Vargas
2 the ability to move for a dismissal based on this.

3 4. As to Defendant NOE VARGAS, it has been represented to Plaintiffs' counsel
4 that he does not have any significant assets and a continuance would allow Plaintiffs' counsel to
5 verify this. In the event Plaintiffs' counsel discovers that Noe Vargas does not have the means
6 by which to satisfy a judgment, Plaintiffs will dismiss the action against him. By signing this
7 Stipulation granting Plaintiffs additional time to verify the financial condition of Noe Vargas, he
8 is not waiving his rights to assert any defense, including that he was not Plaintiffs' employer
9 since he did not exercise control over the nature and structure of the employment relationship
10 and he did not have control of the company operations or finances; rather, he merely acted as a
supervisor to plumbers on his crews.

11 5. As to Defendant Edith Sauno, she and Defendant Armando Vargas were litigating
12 issues over the ownership of three pieces of real property which were a stumbling block for any
13 settlement she could reach with Plaintiffs. Plaintiff recently learned, by an April 16, 2010 Notice
14 from Mr. Milgrom, counsel for the trustee in the Armando Vargas Bankruptcy, that the Trustee
15 intends to compromise claims between Sauno and Vargas. A true and correct copy of the Notice
16 is attached hereto as Exhibit A. Defendant Sauno will get ownership of the properties in
17 exchange for \$150,000.00. If the compromise is approved, this will allow Defendant Sauno to
finance a settlement if one can be reached.

18 6. Defendant Sauno's deposition was also timely Noticed and she is unable to be
19 deposed by the end of this month as she is in Mexico. A continuance will allow the deposition to
20 go forward.

21 7. Finally, three of the eleven Plaintiffs have moved to Mexico. As a result,
22 Plaintiffs' counsel cannot produce them in the United States nor do Defendants have an
23 opportunity to depose them. A continuance would allow the parties to complete discovery or for
24 Plaintiffs to move for a protective order allowing them to be deposed by videoconferencing.
25 Defendants will oppose such a protective order.

8. In spite of the Stipulation for a continued trial date, counsel believe that the parties should still participate in a settlement conference with Judge Lloyd that is to be completed by mid-May 2010. By that time, Plaintiffs' counsel will have had an opportunity to determine the financial status of Noe Vargas, to confirm whether a judgment can be executed with respect to Javier Vargas, and determine if the property compromise between Sauno and the Vargas Estate were approved.

IT IS HEREBY STIPULATED by and between the parties, through their respective counsel, as follows:

1. That the non-jury trial in this matter be continued 90 days to October 25, 2010 at 9:30 a.m..
2. Deadline Fact Discovery Cutoff July 26, 2010
3. Expert Discovery Cutoff July 26, 2010
4. Deadline(s) for Filing Discovery Motions . . . See Civil Local Rule 26-2
5. Last Day for Dispositive Motion Hearing 10:00 a.m. on July 27, 2010
6. Final Pretrial Conference .. 2:00 p.m. on October 19, 2010

FOR PLAINTIFFS

DAL BON & MARGAIN

DATED: April 26, 2010

By: //s// Tomas E. Margain
Tomas E. Margain

FOR DEFENDANTS
ARMANDO
VARGAS; JAVIER
VARGAS; NOE
VARGAS

FISHMAN, LARSEN, GOLDRING
AND ZEITLER

April 26, 2010
DATED: _____

By: //s// Travis Stokes
Travis Stokes

FOR DEFENDANT
EDITH SAUNO

DATED: April 26, 2010

By: //s// Amy Carlson
Amy Carlson

ORDER

Pursuant to the Stipulation of the Parties and Good Cause shown the trial in this matter and pretrial cutoffs are continued as follows:

1. That the non-jury trial in this matter be continued 90 days to October 25, 2010 at 9:30 a.m..
2. Deadline Fact Discovery Cutoff July 26, 2010
3. Expert Discovery Cutoff July 26, 2010
4. Deadline(s) for Filing Discovery Motions . . . See Civil Local Rule 26-2
5. Last Day for Dispositive Motion Hearing¹ 10:00 a.m. on July 27, 2010
6. Final Pretrial Conference .. 2:00 p.m. on October 19, 2010

IT IS HEREBY ORDERED that the parties shall comply with the Standing Order for Civil Practice in Cases Assigned for All Purposes to Magistrate Judge Patricia V. Trumbull (Rev. June 2008), a copy of which is available from the clerk of the court,² with regard to the timing and content of the Joint Pretrial Statement, and all other pretrial submissions.

IT IS SO ORDERED

DATED: April 26, 2010 _____



Hon. Patricia V. Trumbull
UNITED STATES MAGISTRATE JUDGE